



Memorandum

To : Mr. Frank F. Schmidt

Date February 27, 1987

From : Ken McManigal

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Timber Tax Division
State Board of Equalization

Subject: Timber Sale Agreement, Mr. and Mrs. Anthony Tyler

This is in response to your February 18, 1987, memorandum wherein you attached a copy of a Notice of Timber Operations (Exempt) No. 1-87 EX-18 SCR showing the Tylers as the timber owners and G&H Tree Service as the timber operator, and you asked which party is the timber owner for timber yield tax purposes where:

Mr. and Mrs. Tyler, owners of an acre of land and timber in Santa Cruz County, entered into an agreement (verbal) with G&H Tree Service to have merchantable trees removed. In return for clearing the land, G&H Tree Service received the trees, harvested them, sold them in its own name to Scarborough Lumber Company, and received all of the proceeds from the sale. G&H Tree Service was under no obligation to furnish to the Tylers the volume of timber removed, the value of such timber, or any of the proceeds from the sale to Scarborough Lumber Company.

Similar questions have been asked in the past, usually involving written timber sale agreements, contracts, etc. Applicable in the case of written as well as verbal agreements is California Commercial Code section 2107(2), which provides in pertinent part:

"A contract for the sale apart from the land...of timber to be cut is a contract for the sale of goods within this division whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance."

Section 2106 defines "contract for sale" as including a present sale of goods, "sale" as consisting of the passing of title from a seller to the buyer for a price, and "present sale" as meaning a sale which is accomplished by the making of the contract.

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In this instance, the Tylers apparently transferred designated standing timber to G&H Tree Service, and G&H Tree Service acquired the right to cut and remove such timber in return for clearing the land. Presuming the verbal agreement, consistent with section 2107(2), we would regard the agreement as a present sale before severance and G&H Tree Service as the "timber owner" liable for timber yield taxes incurred.

It follows that G&H Tree Service should have been shown as the timber owner on the Notice of Timber Operations (Exempt). As we have noted in previous correspondence, that timberland owners/timber owners who sell their timber for harvesting have been shown as timber owners on Timber Harvesting Plans, etc., does not alter their status as sellers of timber pursuant to their timber sale agreements, contracts, etc.

As to verbal agreements generally, further considerations often present, although not apparently present in this instance, are whether an agreement has actually been entered into and whether an agreement is enforceable. Attached in this regard is a copy of the case of Sloan v. Hiatt (1966), 245 Cal. App.2d 926, for your information and review.

[Signature]
SKM/rz

Attachment

cc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Paul Crebbin
Mr. Earle Gutman *[Signature]*
Legal